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The Honorable Robert Whaley

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 THE UNITED STATES OF
15 AMERICA, For the Use and Benefit
16 of CONTRACTORS EQUIPMENT
17 MAINTENANCE COMPANY, INC.,
18 a Washington corporation,

19 Plaintiff,

20 v.

21 BECHTEL HANFORD, INC., a
22 corporation; P.W. STEPHENS
23 CONTRACTORS, INC., a Missouri
24 corporation; ACSTAR Insurance
25 Company, a foreign corporation,

26 Defendants.

No. CV-02-5006-RHW

MEMORANDUM IN SUPPORT OF
BHI'S MOTION FOR ORDER
SETTING HEARING DATE AND
FOR JUDGMENT

27 I. INTRODUCTION

28 Judgment in favor of Bechtel Hanford, Inc. ("BHI") against ACSTAR Insurance
29 Company ("ACSTAR") and P.W. Stephens Contractors, Inc. ("P.W. Stephens") was

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1 entered by this Court on March 23, 2004. Under the Judgment, ACSTAR and P.W.
2 Stephens are liable to BHI in the principal sum of \$282,611.00, plus fees, costs and pre-
3 judgment interest. On appeal, the Ninth Circuit Court of Appeals affirmed the Judgment
4 principal sum of \$282,611.00 against ACSTAR and P.W. Stephens. The Ninth Circuit
5 Court of Appeals also affirmed this Court's award of fees, costs and prejudgment
6 interest against P.W. Stephens, but reversed the award of fees, contractual costs,
7 expenses and prejudgment interest as to ACSTAR. However, the Ninth Circuit of
8 Appeals held that BHI, as the prevailing party, is entitled to recover costs from
9 ACSTAR under Fed. R. Civ. P. 54(d).
10

11 To date, neither ACSTAR nor P.W. Stephens has made any payment to satisfy the
12 Judgment. Consequently, pursuant to Fed. R. Civ. P. 65.1, BHI hereby moves the Court
13 for judgment against United Coastal Insurance Company ("UCIC"), surety on the
14 Supersedeas Bond for Appeal, in the sum of \$727,818.95, plus \$22.99 per diem after
15 March 23, 2006.
16

17 II. STATEMENT OF FACTS

18 A. Judgment of the District Court and Supersedeas Bond on Appeal.

19 On March 23, 2004, this Court entered a Judgment for BHI against P.W. Stephens
20 and ACSTAR, as P.W. Stephens' surety. Pursuant to the Judgment, ACSTAR and P.W.
21 Stephens are liable to BHI in the principal amount of \$282,611.00, plus fees, costs and
22 prejudgment interest. *See* Judgment, entered on March 23, 2004. The amount of fees,
23 costs and prejudgment interest awarded totaled \$131,873.44. *Id.*
24

25 Subsequently, on or around April 21, 2004, ACSTAR and P.W. Stephens filed a
26 Notice of Appeal. In connection with the appeal, ACSTAR also filed a Notice of Filing

1 Undertaking to Stay Enforcement of Money Judgment Pending Appeal (“Notice of
2 Filing Undertaking”), which provides in relevant part:

3 Please take notice that pursuant to Fed. R. Civ. Pro. 62(d) and Fed. R. of
4 App. Pro. 7 an undertaking is being filed on behalf of Defendant Acstar
5 Insurance Co. ... **to stay the money Judgment for Bechtel Hanford, Inc.**
6 **against P.W. Stephens Contractors, Acstar Insurance Co.** and
7 Contractor’s Equipment Maintenance Co. entered by the Court on
8 May [sic] 23, 2004. The undertaking is given by an admitted surety, and
has heretofore been filed with the Court.

9 See Notice of Filing Undertaking, filed on June 9, 2004. Thus, pursuant to the Notice of
10 Filing Undertaking, ACSTAR posted a Supersedeas bond on behalf of itself and P.W.
11 Stephens to stay the enforcement of Judgment against them both. *Id.*

12 A copy of the Supersedeas Bond on Appeal, bond no. A1391 was attached as
13 Exhibit 1 to the Notice of Filing Undertaking. See Notice of Filing Undertaking.
14 Named as the surety for the Supersedeas Bond was United Coastal Insurance Company
15 (“UCIC”), and the amount of the Bond is in the sum of \$1,066,497.65. *Id.*

16 **B. Result of the Appeal.**

17 On Appeal, the Ninth Circuit Court of Appeal affirmed this Court’s Judgment for
18 BHI against P.W. Stephens and ACSTAR in the principal amount of \$282,611.00. The
19 Ninth Circuit also affirmed this Court’s award of fees, costs and prejudgment interest
20 against P.W. Stephens pursuant to the BHI-PWS Contract. The Ninth Circuit, however,
21 reversed this Court’s award of fees, costs and prejudgment interest as to ACSTAR, but
22 ruled that as the prevailing party, BHI is still entitled to recover costs from ACSTAR
23 under Fed. R. Civ. P. 54(d). The costs to which BHI is entitled to recover from
24 ACSTAR are set forth in the accompanying Bill of Costs, and the supporting documents
25
26

are attached as Exhibits A and B to the Declaration of Marisa M. Bavand, filed on January 30, 2004. In addition, for the Court's convenience, the accompanying Declaration of Marisa M. Bavand ("Bavand Decl.") also provides a summary of the costs that are relevant to the Bill of Costs. In total, the sum of the costs to which BHI is entitled to recover from ACSTAR under Fed. R. Civ. P. 54(d) is \$16,239.56. Hence, providing that ACSTAR pays the \$16,239.56 in costs pursuant to Fed. R. Civ. P. 54(d), the amount of remaining contractual costs, fees and pre-judgment interest to which BHI is entitled to recover from P.W. Stephens is then reduced from \$131,873.44 to \$115,663.88.

C. Refusal of ACSTAR and P.W. Stephens to Satisfy the Judgment.

To date, neither ACSTAR nor P.W. Stephens has made any payment to satisfy the March 23, 2005 Judgment. *See* Bavand Decl. at ¶ 4. BHI therefore seeks to recover its damages against UCIC, the surety for the Supersedeas Bond on Appeal. The amount of the damages BHI seeks to recover is detailed as follows:

For Undertaking Liability of ACSTAR Insurance Company:	
Principal	\$ 282,611.00
Cost Pursuant to Rule 54(d)	\$16,239.56
Post Judgment Interest at 1.18% or \$9.66 per diem Pursuant to 28 U.S.C. §1961 from March 23, 2004 to March 23, 2006	\$7,052.87
Total as of March 23, 2006	\$305,903.43

For Undertaking Liability of P.W. Stephens Contractors, Inc.:	
Contractual Attorney's fees	\$296,554.00
Contractual Costs and Expenses	\$19,604.53
Contractual Pre-Judgment Interest	\$95,989.35
Post Judgment Interest at 1.18% or \$13.33 per diem Pursuant to 28 U.S.C. §1961 from March 23, 2004 to March 23, 2006	\$9,727.63
Total as of March 23, 2006	\$421,915.51

In summary, as of March 23, 2006, the liability of UCIC is \$727,818.95. Thereafter, post judgment interest is accruing at \$22.99 per diem.

III. ISSUES

Should the Court grant the motion of BHI pursuant to Rule 65.1 and enter a judgment against UCIC?

IV. AUTHORITY

Fed. R. Civ. P. 65.1 provides in relevant part:

Whenever these rules ... require or permit the giving of security by a party, and security is given in the form of a bond ... or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

Under the rule, the Court has the authority to grant the request of BHI and enter a judgment against UCIC in the sum of \$727,818.95 for Judgment principal,

1 fees, costs, prejudgment interest and post-judgment interest as of March 23, 2006.

2 Post-judgment interest after March 23, 2006 will accrue at \$22.99 per diem.

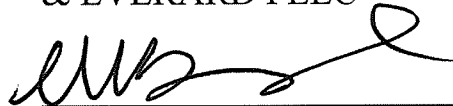
3 **V. CONCLUSION**

4 For the foregoing reasons, BHI respectfully requests that the Court grant
5 BHI's Motion for Judgment.
6

7 Dated this 7th day of February, 2006.

8 Respectfully submitted,

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11 

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